

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**BERGELINO GARCIA,**

**Petitioner,**

v.

**ROBERT NIELSON, WARDEN,  
and THE ATTORNEY GENERAL  
OF THE STATE OF ALABAMA,**

**Respondents.**


## MEMORANDUM OPINION

This is an action on a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by Bergelino Garcia, an Alabama state prisoner who filed this case *pro se*. (Doc. 1-1). On June 20, 2016, the Magistrate Judge entered a Report and Recommendation pursuant to 28 U.S.C. § 636(b). (Doc. 6). The Magistrate Judge has recommended that habeas relief be denied and that the action be dismissed with prejudice because Petitioner's claims are unexhausted and now procedurally defaulted. (*Id.*) No objections to the Report and Recommendation have been filed, and the time prescribed for doing so has expired.

After carefully reviewing and considering *de novo* all the materials in the court file, including the Magistrate Judge's Report and Recommendation, the court determines the Magistrate Judge's findings are due to be and are hereby **ADOPTED** and his recommendation is **ACCEPTED**. Accordingly, the petition for a writ of habeas corpus is due to be denied and this action is due to be dismissed with prejudice. Further, the court concludes that the petition does not present issues that are debatable among jurists of reason, so a certificate of appealability is also due to be denied. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000); Rule 11(a), RULES

GOVERNING § 2254 PROCEEDINGS. A separate Final Order will be entered.

**DONE** and **ORDERED** this 25th day of July, 2016.

A handwritten signature in black ink, appearing to read 'R. David Proctor', with a long horizontal stroke extending to the right.

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**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE